



Senate

General Assembly

February Session, 2014

File No. 522

Senate Bill No. 454

Senate, April 14, 2014

The Committee on Government Administration and Elections reported through SEN. MUSTO of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT INCREASING THE TRANSPARENCY OF GENERAL BIDS FOR STATE CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 4b-91 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2014*):

4 (b) The Commissioner of Administrative Services, the joint
5 committee or the constituent unit, as the case may be, shall determine
6 the manner of submission and the conditions and requirements of such
7 bids, and the time within which the bids shall be submitted, consistent
8 with the provisions of sections 4b-91 to 4b-96, inclusive, as amended
9 by this act. Such award shall be made not later than ninety days after
10 the opening of such bids. If the general bidder selected [as the general
11 contractor] fails to perform the general [contractor's] bidder's
12 agreement to execute a contract in accordance with the terms of the
13 [general contractor's] bidder's general bid and furnish a performance

14 bond and also a labor and materials or payment bond to the amount
15 specified in the general bid form, an award shall be made to the next
16 lowest responsible and qualified general bidder. No employee of the
17 Department of Administrative Services, the joint committee or a
18 constituent unit with decision-making authority concerning the award
19 of a contract and no public official, as defined in section 1-79, may
20 communicate with any bidder prior to the award of the contract if the
21 communication results in the bidder receiving information about the
22 contract that is not available to other bidders, except that if the lowest
23 responsible and qualified bidder's price submitted is in excess of funds
24 available to make an award, the Commissioner of Administrative
25 Services, the Joint Committee on Legislative Management or the
26 constituent unit, as the case may be, may negotiate with such bidder
27 and award the contract on the basis of the funds available, without
28 change in the contract specifications, plans and other requirements. If
29 the award of a contract on said basis is refused by such bidder, the
30 Commissioner of Administrative Services, the Joint Committee on
31 Legislative Management or the constituent unit, as the case may be,
32 may negotiate with other contractors who submitted bids in ascending
33 order of bid prices without change in the contract, specifications, plans
34 and other requirements. In the event of negotiation with general
35 bidders as provided in this section, the general bidder involved may
36 negotiate with subcontractors on the same basis, provided such
37 general bidder shall negotiate only with subcontractors named on such
38 general bidder's general bid form.

39 Sec. 2. Section 4b-93 of the general statutes is repealed and the
40 following is substituted in lieu thereof (*Effective October 1, 2014*):

41 (a) Every contract subject to this chapter shall include plans and
42 specifications detailing all labor and materials to be furnished
43 thereunder. Such specifications shall have a separate section for each
44 [of the following classes of work] class of work for contractors
45 established by the Department of Administrative Services for
46 prequalification purposes under section 4a-100 if, in the estimate of the
47 awarding authority, the class of work will exceed twenty-five

48 thousand dollars. [(1) Masonry work; (2) electrical work; (3)
49 mechanical work other than heating, ventilating and air conditioning
50 work; and (4) heating, ventilating and air conditioning work.] Such
51 specifications shall also have a separate section for each other class of
52 work for which the awarding authority deems it necessary or
53 convenient.

54 (b) Each separate section in the specifications provided for by this
55 section shall specify by number each sheet of plans showing work to
56 be done by the subcontractor under such section, and shall require the
57 subcontractor to install by the subcontractor's own work force all
58 materials to be furnished by him under such section other than
59 materials which, in the opinion of the awarding authority, it is not
60 customary under current trade practices for such subcontractor to
61 install and the installation of which is expressly required by another
62 section of the specifications. Each class of work set forth in a separate
63 section of the specifications pursuant to this section shall be a subtrade
64 designated in the general bid form and shall be the matter of a
65 subcontract made in accordance with the procedure set forth in this
66 chapter. A subcontractor may not subcontract any portion of the work
67 to another subcontractor unless such other subcontractor's bid price
68 was included in the original subcontractor's bid and the original
69 subcontractor files a copy of a fully executed subcontract with the
70 secondary subcontractor with the awarding authority or its agent in
71 addition to the original subcontractor's fully executed contract.

72 (c) Whenever the awarding authority has designated a separate
73 section for a class of work, under subsection (a) of this section, the
74 general contractor shall, when applicable, state as part of its
75 application for partial payment that it considers the work required to
76 be done under any such separate section to be fully completed in
77 accordance with the terms of the contract. The awarding authority
78 shall thereupon conduct an inspection of the work in such class, and if
79 it finds that such work has been fully completed in accordance with
80 the terms of the contract, it shall issue a statement certifying that such
81 work is accepted as fully completed, and shall pay the general

82 contractor in full for such work.

83 Sec. 3. Section 4b-95 of the general statutes is repealed and the
84 following is substituted in lieu thereof (*Effective October 1, 2014*):

85 (a) For purposes of this section, "awarding authority" includes
86 anyone acting on behalf of or as an agent of the state agency awarding
87 the contract. The awarding authority shall furnish to every person
88 applying therefor a form for general bid.

89 (b) Every general bid submitted for a contract subject to this chapter
90 shall be submitted on a form furnished by the awarding authority. The
91 form provided by the awarding authority shall provide a place for
92 listing the names and prices of subcontractors for the [four] classes of
93 work [specified] referenced in subsection (a) of section 4b-93, as
94 amended by this act, and for each other class of work included by the
95 awarding authority pursuant to said subsection and state that: (1) The
96 undersigned agrees that if selected as general contractor or
97 subcontractor as defined in section 4a-100, he shall, within five days,
98 Saturdays, Sundays and legal holidays excluded, after presentation
99 thereof by the awarding authority, execute a contract in accordance
100 with the terms of the general bid; (2) the undersigned agrees and
101 warrants that he has made good faith efforts to employ minority
102 business enterprises as subcontractors and suppliers of materials
103 under such contract and shall provide the Commission on Human
104 Rights and Opportunities with such information as is requested by the
105 commission concerning his employment practices and procedures as
106 they relate to the provisions of the general statutes governing contract
107 requirements; and (3) the undersigned agrees that each of the
108 subcontractors listed on the bid form will be used for the work
109 indicated at the amount stated, unless a substitution is permitted by
110 the awarding authority. The awarding authority may require in the bid
111 form that the general contractor or subcontractor as defined in section
112 4a-100 agree to perform a stated, minimum percentage of work with
113 his own forces.

114 (c) General bids shall be for the complete work as specified and shall

115 include the names of any subcontractors for the [four] classes of work
116 [specified] referenced in subsection (a) of section 4b-93, as amended by
117 this act, and for each other class of work for which the awarding
118 authority has required a separate section pursuant to said subsection
119 and the dollar amounts of their subcontracts, and the general
120 contractor shall be selected on the basis of such general bids. It shall be
121 presumed that the general bidder intends to perform with its own
122 employees all work in such [four] classes and such other classes, for
123 which no subcontractor is named. The general bidder's qualifications
124 for performing such work shall be subject to review under section 4b-
125 92, as amended by this act. Every general bid which is conditional or
126 obscure, or which contains any addition not called for, shall be invalid;
127 and the awarding authority shall reject every such general bid. The
128 awarding authority shall be authorized to waive minor irregularities
129 which he considers in the best interest of the state, provided the
130 reasons for any such waiver are stated in writing by the awarding
131 authority and made a part of the contract file. No such general bid
132 shall be rejected because of the failure to submit prices for, or
133 information relating to, any item or items for which no specific space is
134 provided in the general bid form furnished by the awarding authority,
135 but this sentence shall not be applicable to any failure to furnish prices
136 or information required by this section to be furnished in the form
137 provided by the awarding authority. General bids shall be publicly
138 opened and read by the awarding authority forthwith. The awarding
139 authority shall not permit substitution of a subcontractor for one
140 named in accordance with the provisions of this section or substitution
141 of a subcontractor for any designated subtrade work bid to be
142 performed by the general contractor's own forces, except for good
143 cause. The term "good cause" includes but is not limited to a
144 subcontractor's or, where appropriate, a general contractor's: (1) Death
145 or physical disability, if the listed subcontractor is an individual; (2)
146 dissolution, if a corporation or partnership; (3) bankruptcy; (4) inability
147 to furnish any performance and payment bond shown on the bid form;
148 (5) inability to obtain, or loss of, a license necessary for the
149 performance of the particular category of work; (6) failure or inability

150 to comply with a requirement of law applicable to contractors,
151 subcontractors, or construction, alteration, or repair projects; (7) failure
152 to perform his agreement to execute a subcontract under section 4b-96,
153 as amended by this act.

154 (d) The general bid price shall be the price set forth in the space
155 provided on the general bid form. No general bid shall be rejected (1)
156 because of error in setting forth the name of a subcontractor as long as
157 the subcontractor or subcontractors designated are clearly identifiable,
158 or (2) because the plans and specifications do not accompany the bid or
159 are not submitted with the bid. Failure to correctly state a
160 subcontractor's price shall be cause for rejection of the general bidder's
161 bid.

162 (e) Any general contractor who violates any provision of this section
163 shall be disqualified from bidding on other contracts that are subject to
164 the provisions of this chapter for a period not to exceed twenty-four
165 months, commencing from the date on which the violation is
166 discovered, for each violation. The awarding authority shall
167 periodically review the general contractor's subcontracts to insure
168 compliance with such provisions, and shall after each such review
169 prepare a written report setting forth its findings and conclusions.

170 Sec. 4. Section 4b-95a of the general statutes is repealed and the
171 following is substituted in lieu thereof (*Effective October 1, 2014*):

172 If a general bidder customarily performs any of the [four] classes of
173 work [specified] referenced in subsection (a) of section 4b-93, as
174 amended by this act, or any other class of work included by the
175 awarding authority pursuant to said subsection, the general bidder
176 may list himself as a subcontractor together with his price in the space
177 provided in the bid form. A listed sub-bid so submitted by the general
178 bidder shall be considered on a par with other listed sub-bids, and no
179 such sub-bid by a general bidder shall be considered unless the general
180 bidder can show to the satisfaction of the awarding authority, based on
181 objective criteria established for such purpose, that he customarily
182 performs such subtrade work and is qualified to do the character of

183 work required by the applicable section of the specifications.

184 Sec. 5. Section 4b-96 of the general statutes is repealed and the
185 following is substituted in lieu thereof (*Effective October 1, 2014*):

186 [Within] For purposes of this section, awarding authority includes
187 anyone acting on behalf of or as an agent of the state agency awarding
188 the contract. Not later than five days after being notified of the award
189 of a general contract or construction-manager-at-risk project delivery
190 contract with a guaranteed maximum price by the awarding authority,
191 or, in the case of an approval of a substitute subcontractor by the
192 awarding authority, within five days after being notified of such
193 approval, the general bidder shall present to each listed or substitute
194 subcontractor (1) a subcontract in the form set forth in this section, and
195 (2) a notice of the time limit under this section for executing a
196 subcontract. If a listed subcontractor fails within five days, Saturdays,
197 Sundays and legal holidays excluded, after presentation of a
198 subcontract by the general bidder selected, [as a general contractor,] to
199 perform his agreement to execute a subcontract in the form hereinafter
200 set forth with such general bidder, contingent upon the execution of
201 the general contract or construction-manager-at-risk project delivery
202 contract with a guaranteed maximum price, the general contractor or
203 construction-manager-at-risk shall select another subcontractor, with
204 the approval of the awarding authority. When seeking approval for a
205 substitute subcontractor, the general bidder shall provide the
206 awarding authority with all documents showing (A) the general
207 bidder's proper presentation of a subcontract to the listed
208 subcontractor, and (B) communications to or from such subcontractor
209 after such presentation. The awarding authority shall adjust the
210 contract price to reflect the difference between the amount of the price
211 of the new subcontractor and the amount of the price of the listed
212 subcontractor if the new subcontractor's price is lower and may adjust
213 such contract price if the new subcontractor's price is higher. The
214 general bidder shall, with respect to each listed subcontractor or
215 approved substitute subcontractor, file with the awarding authority a
216 copy of each executed subcontract within ten days, Saturdays, Sundays

217 and legal holidays excluded, of presentation of a subcontract to such
218 subcontractor. The subcontract shall be in the following form:

219 SUBCONTRACT

220 THIS AGREEMENT made this of 20.., by and between a
221 corporation organized and existing under the laws of a partnership
222 consisting of an individual doing business as hereinafter called
223 the "Contractor" and a corporation organized and existing under the
224 laws of a partnership consisting of an individual doing business
225 as hereinafter called the "Subcontractor",

226 WITNESSETH that the Contractor and the Subcontractor for the
227 considerations hereafter named, agree as follows:

228 1. The Subcontractor agrees to furnish all labor and materials
229 required for the completion of all work specified in Section No. of
230 the specifications for (Name of Subtrade) and the plans referred
231 to therein and addenda No., and for the (Complete title of project
232 and the project number taken from the title page of the specifications)
233 all as prepared by (Name of Architect or Engineer) for the sum
234 of (\$....) and the Contractor agrees to pay the Subcontractor said
235 sum for said work. This price includes the following alternates:

236 Supplemental No. (s),,,,,,,

237 (a) The Subcontractor agrees to be bound to the Contractor by the
238 terms of the hereinbefore described plans, specifications (including all
239 general conditions stated therein which apply to his trade) and
240 addenda No.,,, and, and, and to assume to the
241 Contractor all the obligations and responsibilities that the Contractor
242 by those documents assumes to the (Awarding Authority or anyone
243 acting on behalf of or as an agent of the state agency awarding the
244 contract), hereinafter called the "Awarding Authority", except to the
245 extent that provisions contained therein are by their terms or by law
246 applicable only to the Contractor.

247 (b) The Contractor agrees to be bound to the Subcontractor by the

248 terms of the hereinbefore described documents and to assume to the
249 Subcontractor all the obligations and responsibilities that the
250 Awarding Authority by the terms of the hereinbefore described
251 documents assumes to the Contractor, except to the extent that
252 provisions contained therein are by their terms or by law applicable
253 only to the Awarding Authority.

254 2. The Contractor agrees to begin, prosecute and complete the entire
255 work specified by the Awarding Authority in an orderly manner so
256 that the Subcontractor will be able to begin, prosecute and complete
257 the work described in this subcontract; and, in consideration thereof,
258 upon notice from the Contractor, either oral or in writing, the
259 Subcontractor agrees to begin, prosecute and complete the work
260 described in this Subcontract in an orderly manner in accordance with
261 completion schedules prescribed by the general contractor for each
262 subcontract work item, based on consideration to the date or time
263 specified by the Awarding Authority for the completion of the entire
264 work.

265 3. The Subcontractor agrees to furnish to the Contractor, within a
266 reasonable time after the execution of this subcontract, evidence of
267 workers' compensation insurance as required by law and evidence of
268 public liability and property damage insurance of the type and in
269 limits required to be furnished to the Awarding Authority by the
270 Contractor.

271 4. The Contractor agrees that no claim for services rendered or
272 materials furnished by the Contractor to the Subcontractor shall be
273 valid unless written notice thereof is given by the Contractor to the
274 Subcontractor during the first forty (40) days following the calendar
275 month in which the claim originated.

276 5. This agreement is contingent upon the execution of a general
277 contract or construction-manager-at-risk project delivery contract with
278 a guaranteed maximum price between the Contractor and the
279 Awarding Authority for the complete work.

280 IN WITNESS WHEREOF, the parties hereto have executed this
281 agreement the day and year first above-written.

T1 SEAL

T2 ATTEST

T3 (Name of Subcontractor)

T4 By:

T5 SEAL

T6 ATTEST

T7 (Name of Subcontractor)

T8 By:

282 Sec. 6. Section 4b-103 of the general statutes is repealed and the
283 following is substituted in lieu thereof (*Effective October 1, 2014*):

284 (a) In order to carry out any provision of this title for the
285 construction, renovation or alteration of buildings or facilities, the
286 Commissioner of Administrative Services may enter into a
287 construction manager at-risk project delivery contract.

288 (b) The Commissioner of Administrative Services shall not enter
289 into a construction manager at-risk project delivery contract that does
290 not provide for a maximum guaranteed price for the cost of
291 construction that shall be determined not later than the time of the
292 receipt and approval by the commissioner of the trade contractor bids.
293 Each construction manager at-risk shall invite bids and give notice of
294 opportunities to bid on project elements, by advertising, at least once,
295 in one or more newspapers having general circulation in the state.
296 Such project elements for bidding purposes shall be determined in
297 accordance with subsections (a) and (b) of section 4b-93, as amended
298 by this act. Each bid shall be kept sealed until opened publicly at the
299 time and place as set forth in the notice soliciting such bid. The
300 construction manager at-risk shall, after consultation with and
301 approval by the commissioner, award any related contracts for project
302 elements to the responsible qualified contractor submitting the lowest
303 bid in compliance with the bid requirements, provided (1) the

304 construction manager at-risk shall not be eligible to submit a bid for
305 any such project element, and (2) construction shall not begin prior to
306 the determination of the maximum guaranteed price, except for the
307 project elements of site preparation and demolition that have been
308 previously put out to bid and awarded.

309 Sec. 7. Subsection (f) of section 31-53 of the 2014 supplement to the
310 general statutes is repealed and the following is substituted in lieu
311 thereof (*Effective October 1, 2014*):

312 (f) Each employer subject to the provisions of this section or section
313 31-54 and each contracting agency shall (1) keep, maintain and
314 preserve such records relating to the wages and hours worked by each
315 person performing the work of any mechanic, laborer and worker and
316 a schedule of the occupation or work classification at which each
317 person performing the work of any mechanic, laborer or worker on the
318 project is employed during each work day and week in such manner
319 and form as the Labor Commissioner establishes to assure the proper
320 payments due to such persons or employee welfare funds under this
321 section or section 31-54, regardless of any contractual relationship
322 alleged to exist between the contractor and such person, and (2) submit
323 monthly to the contracting agency or any agent of such contracting
324 agency by mail, or other method accepted by such agency, a certified
325 payroll that shall consist of a complete copy of such records
326 accompanied by an original statement signed by the employer that
327 indicates (A) such records are correct; (B) the rate of wages paid to
328 each person performing the work of any mechanic, laborer or worker
329 and the amount of payment or contributions paid or payable on behalf
330 of each such person to any employee welfare fund, as defined in
331 subsection (i) of this section, are not less than the prevailing rate of
332 wages and the amount of payment or contributions paid or payable on
333 behalf of each such person to any employee welfare fund, as
334 determined by the Labor Commissioner pursuant to subsection (d) of
335 this section, and not less than those required by the contract to be paid;
336 (C) the employer or any agent of a contracting agency has complied
337 with the provisions of this section and section 31-54; (D) each such

338 person is covered by a workers' compensation insurance policy for the
 339 proper occupational classification for the duration of such person's
 340 employment, which shall be demonstrated by submitting to the
 341 contracting agency or the agent of the contracting agency the name of
 342 the workers' compensation insurance carrier covering each such
 343 person and each such person's occupational classification, the effective
 344 and expiration dates of each policy and each policy number; (E) the
 345 employer does not receive kickbacks, as defined in 41 USC 52, from
 346 any employee or employee welfare fund; and (F) pursuant to the
 347 provisions of section 53a-157a, the employer is aware that filing a
 348 certified payroll which the employer knows to be false is a class D
 349 felony for which the employer may be fined up to five thousand
 350 dollars, imprisoned for up to five years, or both. This subsection shall
 351 not be construed to prohibit a general contractor or any agent of a
 352 contracting agency from relying on the certification of a lower tier
 353 subcontractor, provided the general contractor or agent of a
 354 contracting agency shall not be exempted from the provisions of
 355 section 53a-157a if the general contractor or agent knowingly relies
 356 upon a subcontractor's false certification. Notwithstanding the
 357 provisions of section 1-210, the certified payroll shall be considered a
 358 public record and every person shall have the right to inspect and copy
 359 such records in accordance with the provisions of section 1-212. The
 360 provisions of subsections (a) and (b) of section 31-59 and sections 31-66
 361 and 31-69 that are not inconsistent with the provisions of this section
 362 or section 31-54 apply to this section. Failing to file a certified payroll
 363 pursuant to subdivision (2) of this subsection is a class D felony for
 364 which the employer may be fined up to five thousand dollars,
 365 imprisoned for up to five years, or both.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	4b-91(b)
Sec. 2	October 1, 2014	4b-93
Sec. 3	October 1, 2014	4b-95
Sec. 4	October 1, 2014	4b-95a
Sec. 5	October 1, 2014	4b-96

Sec. 6	<i>October 1, 2014</i>	4b-103
Sec. 7	<i>October 1, 2014</i>	31-53(f)

GAE *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Dept. of Administrative Services	GF - Cost	575,000	300,000
State Comptroller - Fringe Benefits ¹	GF - Cost	82,485	109,980

Municipal Impact: None

Explanation

The bill makes several changes concerning the awarding of subcontracts for public works projects that are subject to the state's competitive bidding laws. The Department of Administrative Services (DAS) would need to hire a consultant at up to \$100,000 in FY 15 to re-design bidding systems, revise templates, bid forms, manuals, and reporting systems.

To implement the revised bid award requirements, DAS would need to make improvements to their IT systems that track subcontractors and second tier contracting data as their current IT system is not capable of tracking this data. It is anticipated that improvements to this system would cost \$250,000 in FY 15.

In addition, it is estimated that DAS would require four positions at a cost of \$307,485 (\$225,000 in salary and \$82,485 in fringe benefits) in FY 15 to operate with the expanded requirements. The new positions would collect and review listed subcontracts and lower tier

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.66% of payroll in FY 15 and FY 16.

subcontracts, handle increased bid protests, scope reviews of bid packages, and manage requests from contractors or subcontractors for substitutions of subcontractor or lower tier subcontractors who are unable to perform their duties.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 454*****AN ACT INCREASING THE TRANSPARENCY OF GENERAL BIDS FOR STATE CONTRACTS.*****SUMMARY:**

This bill makes several changes concerning the awarding of subcontracts for public works projects subject to the state's competitive bidding laws. It requires a general bidder to separately list subcontractor names and prices for any class of work expected to cost more than \$25,000 and for which the Department of Administrative Services (DAS) has a prequalification classification. It also (1) limits the circumstances under which a subcontractor may subcontract work that it is awarded and (2) allows an awarding authority to require a subcontractor to perform a minimum percentage of the work with its own forces.

The bill applies the above requirements concerning the listing of subcontractor names and prices to DAS projects that use the construction manager at-risk (CMR) delivery method (see BACKGROUND). It also requires (1) CMRs, within five days of being awarded a contract, to present a subcontract to each subcontractor listed and (2) the subcontractors to execute an agreement within five business days.

The bill also expands the (1) parties that must keep certified payroll records on prevailing wage jobs and (2) information that must be included in the employer-signed certification statement that accompanies these records. It also allows the certified payrolls and related information to be submitted to the contracting agency's agent, instead of the contracting agency itself.

Finally, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014

§§ 2 & 3 — SUBCONTRACTOR BIDS AND AWARDS

The bill requires a general bidder to separately list in the bid the cost of any class of work (and name the subcontractor that will perform the work) on a contract's plans and specifications if (1) DAS has a prequalification classification for that work and (2) the cost is expected to exceed \$25,000. Under current law, the listing requirement (and \$25,000 threshold) applies only to masonry; electrical; mechanical; heating, ventilation, and air conditioning; and any other classes deemed necessary or convenient by the awarding authority. Under DAS regulations, there are 34 subcontractor prequalification classifications (Conn. Agencies Reg., § 4a-100-2(g)).

By law, with certain exceptions, a subcontractor named in the general bid must install all materials for work that it is awarded and that are required by the project's specifications. The bill specifies that the subcontractor must use its own work force to do this. It prohibits a subcontractor from subcontracting any portion of work that it is awarded unless (1) the "sub-subcontractor's" bid price was included in the original bid and (2) the original subcontractor files, with the awarding authority or its agent, a copy of a fully executed subcontract with the sub-subcontractor in addition to the original subcontractor's fully executed subcontract. The bill allows an awarding authority to require a subcontractor to perform a minimum percentage of the work with its own forces.

By law, a general bid for a project subject to competitive bidding requirements must be submitted on a form furnished by the awarding authority. Among other things, the form requires the bidder to agree that it will execute a contract within five business days after the awarding authority presents it. The bill requires the bidder to also agree to do this if selected as a subcontractor. It also specifies that, in this context, "awarding authority" includes anyone acting on behalf of or as an agent of the contracting agency. Because the form is submitted by general bidders, the subcontractor's role in this process is unclear.

§§ 5 & 6 — CONSTRUCTION MANAGER AT-RISK PROJECTS

By law, a general bidder awarded a general contract by the awarding authority must, within five days, present a subcontract to each subcontractor listed on the general bid. The subcontractor must execute an agreement, using a standard form specified in statute, within five business days after being presented with the subcontract. The bill (1) applies these requirements to CMR projects and (2) specifies that, in this context, “awarding authority” includes anyone acting on behalf of, or as an agent of, the contracting agency. It also requires a CMR project’s elements for bidding purposes (i.e., the “trades packages”) to separately list any class of work for which DAS has a prequalification classification.

By law, the DAS commissioner must approve the trade contractor bids for a CMR project, but current law does not specify (1) the form of the subcontracts or (2) how to determine which trade packages to include in the project. In practice, the CMR uses its own subcontract forms and determines which trade packages to include.

§ 7 – PREVAILING WAGE CERTIFIED PAYROLL RECORDS

The bill expands the (1) parties that must keep certified payroll records on prevailing wage jobs and (2) information that must be included in the employer-signed certification statement that accompanies these records. It also allows the certified payrolls and information to be submitted to the contracting agency’s agent, instead of the contracting agency. The bill specifies that a contracting agency’s agent can rely on a lower-tier subcontractor’s payroll certification, as long as the agent does not know the subcontractor’s certification is false. (As neither the law nor the bill requires the agent to certify payroll records, the effect of this provision is unclear.)

Payroll Record Keeping

Current law requires employers (i.e., construction contractors) on prevailing wage jobs to (1) keep, maintain, and preserve their employees’ payroll records and (2) submit them monthly to the state or local agency that contracted for the work. The bill requires the

contracting agency to do the same for these records and allows them to be submitted to the contracting agency's agent. (Presumably, the contracting agency would not prepare these records, since it does not directly oversee the contractor's employees or their payroll, but it would keep them and could submit them to its agent.) By law, unchanged by the bill, failing to file a certified payroll (or filing one that is false) is a class D felony for which an employer (but not a contracting agency) can be fined up to \$5,000, imprisoned for five years, or both.

Payroll Certification

When submitting the above payroll records to a contracting agency, current law requires an employer to include an original statement signed by the employer indicating, among other things, that (1) the employer has met the prevailing wage law's requirements, (2) each person on the job is covered by a workers' compensation insurance policy, and (3) the employer understands that knowingly filing a false certified payroll is a class D felony. The bill requires the employer-signed statement to also indicate that the (1) contracting agency's agents have met the prevailing wage law's requirements and (2) worker's compensation insurance coverage for each person is for that person's proper occupational classification. It is unclear how an employer would know if the contracting agency's agents have met the prevailing wage law's requirements (see COMMENT).

BACKGROUND

CMR Projects

In a CMR project, the owner (e.g., DAS) hires a firm with construction experience (the construction manager or "CM"), usually during a project's design phase, to manage the entire construction process. The CM provides pre-construction services such as estimating costs, budgeting, reviewing constructability and suggesting construction alternatives, and scheduling. Once the design is finalized, the CM seeks competitive bids from subcontractors for each project element (e.g., electrical, mechanical, carpentry, roofing). Once the subcontractors' bids are received and verified for compliance with

project requirements, scope, and specifications, the CM and the project owner negotiate and set a guaranteed maximum price (GMP) for construction. The CM assumes the risk to complete the project within the GMP.

The GMP includes the CM's fee, the cost of the work, and contingency funds for the project. The CM is responsible for costs that exceed the GMP, excluding any work not included in the final GMP that the owner authorizes through a change order process.

COMMENT

Certified Payrolls

The bill requires employers on prevailing wage jobs to sign a certified payroll statement indicating that the contracting agency's agents have complied with the prevailing wage laws' requirements. However it is unclear how an employer would know about the agent's compliance. By law, it is a D felony for an employer to fail to file a certified payroll or intentionally make a false written statement on it.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 11 Nay 3 (03/24/2014)